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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH CENTRAL DIVISION

DAMON CRIST, Plaintiff, v. DR. KENNON TUBBS, et al., Defendants.	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT Case No. 2:10cv00675 Judge Ted Stewart
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Defendants Dr. Kennon Tubbs, Sgt. William Morrell, Wesley Shuman, Christopher Best, Ford Fannen, Sgt. James Olin and Billie Casper (collectively hereinafter "Defendants" or "Prison Officials"), by and through counsel David N. Wolf, Assistant Utah Attorney General, pursuant to Federal Rule of Civil Procedure 56 and DUCivR 56-1(a) respectfully move the court for summary judgment on all claims in Plaintiff Damon Crist's Second Amended Complaint ([doc. 57](#)).¹

¹ The Court ordered service of Plaintiff's Second Amended Complaint ([doc. 16](#)). Later, Crist discovered that one page of the Second Amended Complaint had not been included, and forwarded a complete document to the Court and to opposing counsel ([doc. 57](#)). Defendants consider this version to be the complete pleading, and all references to Plaintiff's Complaint are to the Second Amended Complaint ([doc. 57](#)) filed June 23, 2011.

There are no genuine issues of material fact, and the Prison Officials are entitled to judgment as a matter of law on all Crist's claims.

As to Count I, Crist cannot establish that his due process rights were violated through the prison grievance procedure, as Crist has no right to the grievance procedure and, in any event, all grievances were handled properly. To the extent the grievances were not handled properly, Defendant Casper's conduct was objectively reasonable, and thus she is entitled to qualified immunity.

As to Counts II, III, and IV, Crist's First Amendment retaliation claims fail because Crist can establish no triable issue as to (a) his engaging in a protected activity, (b) an adverse action causing a person of ordinary firmness to discontinue the activity, and (c) but-for causation.

Also as to Counts II, III, IV, V, VI, and VII, Crist's Eighth Amendment claims fail as to Dr. Tubbs because, at most, Crist's claims are a disagreement with Dr. Tubbs's medical treatment, not allegations of deliberate indifference. The remaining Eighth Amendment claims fail because Crist cannot prove any wanton infliction of pain or deliberate indifference. Moreover, Crist cannot demonstrate that any right was "clearly established" at the time, and the Prison Officials' conduct was objectively reasonable. Thus, qualified immunity shields the Prison Officials' conduct.

As to Counts I–VII, Crist's state constitutional claims are foreclosed because they are redressable under the Federal Constitution.

As to the Counts labelled "Pendent Jurisdiction" in Paragraph 35, subparagraphs H, I, and J, Crist's state law claims fail because he cannot plead and prove all their essential elements, and because the Prison Officials are immune from suit.

For these reasons and for the reasons stated in the accompanying Defendants' Memorandum in Support of Defendants' Motion for Summary Judgment, filed contemporaneously herewith, and the declarations, documents, and evidence referenced therein, the Prison Officials respectfully request that the Court grant their motion for summary judgment and dismiss all Crist's claims, with prejudice.

DATED this 24th day of October, 2011.

MARK L. SHURTLEFF
Utah Attorney General

/s/ David N. Wolf
DAVID N. WOLF
Assistant Utah Attorney General
Attorney for Defendants

CERTIFICATE OF MAILING

I certify that on October 24, 2011, I electronically filed the foregoing **DEFENDANTS'** **MOTION FOR SUMMARY JUDGMENT**, using the Court's CM/ECF system and I also certify that a true and correct copy of the foregoing was sent by United States mail, postage prepaid, to the following:

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/s/ Yvonne Schenk